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7 ATTORNEYS FOR DEFENDANT CITY OF LOS ANGELES

8 **UNITED STATES DISTRICT COURT**

9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 GRACIELA HERRERA,

12
13 Plaintiff,

14 vs.

15 CITY OF LOS ANGELES; and DOES
16 1-10, inclusive,
17 Defendants.

Case No.: CV 16-2719 DSF (SKx)

Honorable Judge: Dale S. Fischer

Honorable Magistrate Judge: Steve King

**ANSWER OF DEFENDANT CITY
OF LOS ANGELES TO
PLAINTIFF'S COMPLAINT FOR
DAMAGES AND; DEMAD FOR
JURY TRIAL**

19
20 **COMES NOW DEFENDANT CITY OF LOS ANGELES** answering

21 Plaintiff's Complaint in the above-entitled action, for itself and for no other party,
22
23 hereby admits, denies, and alleges as follows:

24 1. Answering paragraph 1 of the Complaint, no factual allegations are made
25 therein, and on that basis the paragraph goes unanswered.
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27
28

1 2. Answering paragraph 2 of the Complaint, defendant lacks sufficient
2 information and belief upon which to answer the allegations contained therein, and on
3 that basis denies the allegations.
4

5 3. Answering paragraph 3 of the Complaint, no factual allegations are made
6 therein, and on that basis the paragraph goes unanswered.
7

8 4. Answering paragraph 4 of the Complaint, no factual allegations are made
9 therein, and on that basis the paragraph goes unanswered.
10

11 5. Answering paragraph 5 of the Complaint, no factual allegations are made
12 therein, and on that basis the paragraph goes unanswered.
13

14 6. Answering paragraph 6 of the Complaint, no factual allegations are made
15 therein, and on that basis the paragraph goes unanswered.
16

17 7. Answering paragraph 7 of the Complaint, no factual allegations are made
18 therein, and on that basis the paragraph goes unanswered.
19

20 8. Answering paragraph 8 of the Complaint, no factual allegations are made
21 therein, and on that basis the paragraph goes unanswered.
22

23 9. Answering paragraph 9 of the Complaint, no factual allegations are made
24 therein, and on that basis the paragraph goes unanswered.
25
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1 10. Answering paragraph 10 of the Complaint, defendant lacks sufficient
2 information and belief upon which to answer the allegations contained therein, and on
3 that basis denies the allegations.
4

5 11. Answering paragraph 11 of the Complaint, defendant lacks sufficient
6 information and belief upon which to answer the allegations contained therein, and on
7 that basis denies the allegations.
8

9 12. Answering paragraph 12 of the Complaint, defendant admits the
10 allegations contained therein.
11

12 13. Answering paragraph 13 of the Complaint, no factual allegations are
13 made therein, and on that basis the paragraph goes unanswered.
14

15 14. Answering paragraph 14 of the Complaint, which incorporates by
16 reference the allegations of other paragraphs of the pleading, defendant to the same
17 extent incorporates by reference the answers provided herein to those paragraphs.
18

19 15. Answering paragraph 15 of the Complaint, defendant lacks sufficient
20 information and belief upon which to answer the allegations contained therein, and on
21 that basis denies the allegations.
22

23 16. Answering paragraph 16 of the Complaint, defendant lacks sufficient
24 information and belief upon which to answer the allegations contained therein, and on
25 that basis denies the allegations.
26

27 17. Answering paragraph 17 of the Complaint, defendant denies the
28

1 allegations contained therein.

2
3
4 18. Answering paragraph 18 of the Complaint, defendant lacks sufficient
5 information and belief upon which to answer the allegations contained therein, and on
6 that basis denies the allegations.
7

8 19. Answering paragraph 19 of the Complaint, defendant lacks sufficient
9 information and belief upon which to answer the allegations contained therein, and on
10 that basis denies the allegations.
11

12 20. Answering paragraph 20 of the Complaint, defendant denies the
13 allegations contained therein.
14

15 21. Answering paragraph 21 of the Complaint, defendant denies the
16 allegations contained therein.
17

18 22. Answering paragraph 22 of the Complaint, defendant denies the
19 allegations contained therein.
20

21 23. Answering paragraph 23 of the Complaint, no factual allegations are
22 made therein, and on that basis the paragraph goes unanswered.

23 24. Answering paragraph 24 of the Complaint, no factual allegations are
24 made therein, and on that basis the paragraph goes unanswered.
25

26 25. Answering paragraph 25 of the Complaint, no factual allegations are
27 made therein, and on that basis the paragraph goes unanswered.
28

1 26. Answering paragraph 26 of the Complaint, which incorporates by
2 reference the allegations of other paragraphs of the pleading, defendant to the same
3 extent incorporates by reference the answers provided herein to those paragraphs.
4

5 27. Answering paragraph 27 of the Complaint, no factual allegations are
6 made therein, and on that basis the paragraph goes unanswered.
7

8 28. Answering paragraph 28 of the Complaint, no factual allegations are
9 made therein, and on that basis the paragraph goes unanswered.
10

11 29. Answering paragraph 29 of the Complaint, defendant denies the
12 allegations contained therein.
13

14 30. Answering paragraph 30 of the Complaint, defendant denies the
15 allegations contained therein.
16

17 31. Answering paragraph 31 of the Complaint, no factual allegations are
18 made therein, and on that basis the paragraph goes unanswered.
19

20 32. Answering paragraph 32 of the Complaint, no factual allegations are
21 made therein, and on that basis the paragraph goes unanswered.
22

23 33. Answering paragraph 33 of the Complaint, which incorporates by
24 reference the allegations of other paragraphs of the pleading, defendant to the same
25 extent incorporates by reference the answers provided herein to those paragraphs.
26

27 34. Answering paragraph 34 of the Complaint, no factual allegations are
28 made therein, and on that basis the paragraph goes unanswered.

1 35. Answering paragraph 35 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.

3
4 36. Answering paragraph 36 of the Complaint, no factual allegations are
5 made therein, and on that basis the paragraph goes unanswered.

6
7 37. Answering paragraph 37 of the Complaint, no factual allegations are
8 made therein, and on that basis the paragraph goes unanswered.

9
10 38. Answering paragraph 38 of the Complaint, defendant denies the
11 allegations contained therein.

12 39. Answering paragraph 39 of the Complaint, defendant denies the
13 allegations contained therein.

14
15 40. Answering paragraph 40 of the Complaint, no factual allegations are
16 made therein, and on that basis the paragraph goes unanswered.

17
18 41. Answering paragraph 41 of the Complaint, no factual allegations are
19 made therein, and on that basis the paragraph goes unanswered.

20 42. Answering paragraph 42 of the Complaint, which incorporates by
21 reference the allegations of other paragraphs of the pleading, defendant to the same
22 extent incorporates by reference the answers provided herein to those paragraphs.

23
24 43. Answering paragraph 43 of the Complaint, no factual allegations are
25 made therein, and on that basis the paragraph goes unanswered.

1 44. Answering paragraph 44 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.
3

4 45. Answering paragraph 45 of the Complaint, no factual allegations are
5 made therein, and on that basis the paragraph goes unanswered.
6

7 46. Answering paragraph 46 of the Complaint, no factual allegations are
8 made therein, and on that basis the paragraph goes unanswered.
9

10 47. Answering paragraph 47 of the Complaint, no factual allegations are
11 made therein, and on that basis the paragraph goes unanswered.
12

13 48. Answering paragraph 48 of the Complaint, no factual allegations are
14 made therein, and on that basis the paragraph goes unanswered.
15

16 49. Answering paragraph 49 of the Complaint, no factual allegations are
17 made therein, and on that basis the paragraph goes unanswered.
18

19 50. Answering paragraph 50 of the Complaint, no factual allegations are
20 made therein, and on that basis the paragraph goes unanswered.
21

22 51. Answering paragraph 51 of the Complaint, no factual allegations are
23 made therein, and on that basis the paragraph goes unanswered.
24

25 52. Answering paragraph 52 of the Complaint, no factual allegations are
26 made therein, and on that basis the paragraph goes unanswered.
27

28 53. Answering paragraph 53 of the Complaint, no factual allegations are
made therein, and on that basis the paragraph goes unanswered.

1 54. Answering paragraph 54 of the Complaint, which incorporates by
2 reference the allegations of other paragraphs of the pleading, defendant to the same
3 extent incorporates by reference the answers provided herein to those paragraphs.
4

5 55. Answering paragraph 55 of the Complaint, defendant denies the
6 allegations contained therein.
7

8 56. Answering paragraph 56 of the Complaint, defendant denies the
9 allegations contained therein.
10

11 57. Answering paragraph 57 of the Complaint, defendant denies the
12 allegations contained therein.
13

14 58. Answering paragraph 58 of the Complaint, defendant lacks sufficient
15 information and belief upon which to answer the allegations contained therein, and on
16 that basis denies the allegations.
17

18 59. Answering paragraph 59 and subparts (a-g) and (f sic) of the Complaint,
19 defendant denies the allegations contained therein.
20

21 60. Answering paragraph 60 of the Complaint, no factual allegations are
22 made therein, and on that basis the paragraph goes unanswered.
23

24 61. Answering paragraph 61 of the Complaint, no factual allegations are
25 made therein, and on that basis the paragraph goes unanswered.
26

27 62. Answering paragraph 62 of the Complaint, no factual allegations are
28 made therein, and on that basis the paragraph goes unanswered.

1 63. Answering paragraph 63 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.
3

4 64. Answering paragraph 64 of the Complaint, no factual allegations are
5 made therein, and on that basis the paragraph goes unanswered.
6

7 65. Answering paragraph 65 of the Complaint, no factual allegations are
8 made therein, and on that basis the paragraph goes unanswered.
9

10 66. Answering paragraph 66 of the Complaint, no factual allegations are
11 made therein, and on that basis the paragraph goes unanswered.
12

13 67. Answering paragraph 67 of the Complaint, no factual allegations are
14 made therein, and on that basis the paragraph goes unanswered.
15

16 68. Answering paragraph 68 of the Complaint, no factual allegations are
17 made therein, and on that basis the paragraph goes unanswered.
18

19 69. Answering paragraph 69 of the Complaint, which incorporates by
20 reference the allegations of other paragraphs of the pleading, defendant to the same
21 extent incorporates by reference the answers provided herein to those paragraphs.
22

23 70. Answering paragraph 70 of the Complaint, defendant denies the
24 allegations contained therein.
25

26 71. Answering paragraph 71 of the Complaint, no factual allegations are
27 made therein, and on that basis the paragraph goes unanswered.
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1 72. Answering paragraph 72 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.
3

4 73. Answering paragraph 73 of the Complaint, defendant denies the
5 allegations contained therein.
6

7 74. Answering paragraph 74 of the Complaint, no factual allegations are
8 made therein, and on that basis the paragraph goes unanswered.
9

10 75. Answering paragraph 75 of the Complaint, no factual allegations are
11 made therein, and on that basis the paragraph goes unanswered.
12

13 76. Answering paragraph 76 of the Complaint, which incorporates by
14 reference the allegations of other paragraphs of the pleading, defendant to the same
15 extent incorporates by reference the answers provided herein to those paragraphs.
16

17 77. Answering paragraph 77 and subparts (a-g) of the Complaint, defendant
18 denies the allegations contained therein.
19

20 78. Answering paragraph 78 of the Complaint, no factual allegations are
21 made therein, and on that basis the paragraph goes unanswered.
22

23 79. Answering paragraph 79 of the Complaint, no factual allegations are
24 made therein, and on that basis the paragraph goes unanswered.
25

26 80. Answering paragraph 80 of the Complaint, no factual allegations are
27 made therein, and on that basis the paragraph goes unanswered.
28

1 81. Answering paragraph 81 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.

3
4 82. Answering paragraph 82 of the Complaint, which incorporates by
5 reference the allegations of other paragraphs of the pleading, defendant to the same
6 extent incorporates by reference the answers provided herein to those paragraphs.
7

8 83. Answering paragraph 83 of the Complaint, no factual allegations are
9 made therein, and on that basis the paragraph goes unanswered.
10

11 84. Answering paragraph 84 of the Complaint, no factual allegations are
12 made therein, and on that basis the paragraph goes unanswered.

13 85. Answering paragraph 85 of the Complaint, defendant denies the
14 allegations contained therein.
15

16 86. Answering paragraph 86 of the Complaint, no factual allegations are
17 made therein, and on that basis the paragraph goes unanswered.
18

19 87. Answering paragraph 87 of the Complaint, no factual allegations are
20 made therein, and on that basis the paragraph goes unanswered.
21

22 88. Answering paragraph 88 of the Complaint, no factual allegations are
23 made therein, and on that basis the paragraph goes unanswered.
24

25 89. Answering paragraph 89 of the Complaint, no factual allegations are
26 made therein, and on that basis the paragraph goes unanswered.
27
28

1 90. Answering paragraph 90 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.
3

4 91. Answering paragraph 91 of the Complaint, no factual allegations are
5 made therein, and on that basis the paragraph goes unanswered.
6

7 92. Answering paragraph 92 of the Complaint, defendant denies the
8 allegations contained therein.

9 93. Answering paragraph 93 of the Complaint, no factual allegations are
10 made therein, and on that basis the paragraph goes unanswered.
11

12 94. Answering paragraph 94 of the Complaint, no factual allegations are
13 made therein, and on that basis the paragraph goes unanswered.
14

15 **AFFIRMATIVE DEFENSES**

16 As a separate and distinct affirmative defenses, defendant alleges each of the
17 following:
18

19 95. The damages alleged were directly and proximately caused and contributed
20 to by the negligence of decedent, and the extent of damages sustained, if any, should
21 be reduced in proportion to the amount of said negligence.
22

23 96. The damages alleged were directly and proximately caused and contributed
24 to by the negligence of other persons, and the extent of damages sustained, if any,
25 should be reduced in proportion to the amount of said negligence.
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1 97. The force used against decedent, if any, was caused and necessitated by the
2 actions of decedent, and was reasonable and necessary for self-defense
3

4 98. The force used against decedent, if any, was caused and necessitated by the
5 actions of decedent, and was reasonable and necessary for the defense of others.
6

7 99. The claims are barred by the statute of limitations set forth in California Code
8 of Civil Procedure section 340(3).
9

10 100. The action should be abated in that all of the heirs of decedent have not been
11 joined as parties.

12 101. The action is barred for lack of standing to sue.
13

14 102. As to the federal claims and theories of recovery, the answering defendant
15 is protected from liability under the doctrine of qualified immunity, because
16 defendant's conduct did not violate clearly established statutory or constitutional rights
17 of which a reasonable person would have known.
18

19 103. Defendant City of Los Angeles and all defendants sued in their official
20 capacities are immune from the imposition of punitive damages.
21

22 104. Defendant is immune from liability pursuant to the provisions of each of the
23 following California statutes, each of which is set forth as a separate and distinct
24 affirmative defense:
25

26 Government Code §§ 815.2, 815.6, 818, 820.8, 834, 834(a), 835, 835(a) and 845.6.

27 Penal Code 836 and 836.5.
28

1 105. The state claims are barred for plaintiff's failure to comply with the
2 provisions of the California Tort Claims Act, Government Code § 910 et seq.
3

4 WHEREFORE, Defendant prays for judgment as follows:

- 5 1. That Plaintiff takes nothing by this action;
6
7 2. That the action be dismissed;
8
9 3. That Defendant be awarded costs of suit;
10
11 4. That Defendant be awarded other and further relief as the Court may
12 deem just and proper, including an award of attorney's fees pursuant to 42 U.S.C. §
13 1988.

14 DATE: May 12, 2016

MICHAEL N. FEUER, CITY ATTORNEY
THOMAS H. PETERS, CHIEF ASST. CITY ATTORNEY
CORY M. BRENT, SUPER. ASSIST CITY ATTORNEY

16 BY: /s/ - Craig J. Miller

17 **CRAIG J. MILLER, DEPUTY CITY ATTORNEY**
18 **ATTORNEYS FOR DEFENDANT CITY OF LOS**
19 **ANGELES**
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DEMAND FOR JURY TRIAL

Defendants hereby demand and request a trial by jury in this matter.

DATE: May 12, 2016

**MICHAEL N. FEUER, CITY ATTORNEY
THOMAS H. PETERS, CHIEF ASST. CITY ATTORNEY
CORY M. BRENT, SUPER. ASSIST CITY ATTORNEY**

BY: /s/ - Craig J. Miller

**CRAIG J. MILLER, DEPUTY CITY ATTORNEY
ATTORNEYS FOR DEFENDANT CITY OF LOS
ANGELES**